

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-brl

4 Adm. Case No. 08-01789-brl

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6 In the Matter of:

7
8 SECURITIES INVESTOR PROTECTION CORPORATION,

9 Debtor.

10 - - - - - x

11 SECURITIES INVESTOR PROTECTION CORPORATION,

12 Plaintiff,

13 v.

14 BERNARD L. MADOFF INVESTMENT SECURITIES,

15 LLC, ET AL.,

16 Defendants.

17 - - - - - x

18 U.S. Bankruptcy Court

19 One Bowling Green

20 New York, New York

21
22 December 19, 2012

23 10:08 AM

1 B E F O R E :
2 HON. BURTON R. LIFLAND
3 U.S. BANKRUPTCY JUDGE
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1 Hearing re: Adversary Proceeding: 08-01798-brl Securities
2 Investor Protection Corporation v. Bernard L. Madoff
3 Investment Securities, LLC. et al.
4 (cc-5097) Tenth Application of Trustee and Baker & Hostetler
5 LLP for Allowance of Interim Compensation for Services
6 Rendered and Reimbursement of Actual and Necessary Expenses
7 Incurred from February 1, 2012 through June 30, 2012 for
8 Baker & Hostetler, L.L.P., Trustee's Attorney, period:
9 2/1/2012 to 6/30/2012, fee: \$61671551.85, expenses:
10 \$1,038,317.74.

11
12 Hearing re: (cc-5096) Ninth Application of Windels Marx
13 Lane & Mittendorf, LLP for Allowance of Interim Compensation
14 for Services Rendered and Reimbursement of Actual and
15 Necessary Expenses Incurred from February 1, 2012 through
16 June 30, 2012 for Windels Marx Lane & Mittendorf, LLP,
17 Special Counsel, period: 2/1/2012 to 6/30/21, fee:
18 \$2,986,228.90, expenses: \$20,442.30.

19
20 Hearing re: (5098) Application of Eugene F. Collins as
21 Special Counsel to the Trustee for Allowance of Interim
22 Compensation for Services Rendered and Reimbursement of
23 Actual and Necessary Expenses Incurred from February 1, 2012
24 through June 30, 2012 for Eugene F. Collins, Special
25 Counsel, period: 2/1/2012 to 6/30/2012, fee: \$1,741.50,

1 expenses: \$213.05.

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3 Hearing re: (5099) Application of Schiltz & Schiltz as
4 Special Counsel to the Trustee for Allowance of Interim
5 Compensation for Services Rendered and Reimbursement of
6 Actual and Necessary Expenses Incurred from February 1, 2012
7 through June 30, 2012 for Schiltz & Schiltz, Special
8 Counsel, period: 2/1/2012 to 6/30/2012, fee: \$45,509.76,
9 expenses: \$2,958.15.

10
11 Hearing re: (5100) Application of Higgs & Johnson (formerly
12 Higgs Johnson Truman Bodden & Co.) as Special Counsel to the
13 Trustee for Allowance of Interim Compensation for Services
14 Rendered and Reimbursement of Actual and Necessary Expenses
15 Incurred from February 1, 2012 through June 30, 2012 for
16 Higgins Johnson Truman Bodden & Co., Special Counsel,
17 period: 2/1/2012 to 6/30/2012, fee: \$109,995.75, expenses:
18 \$13,189.15.

19
20 Hearing re: (5101) Application of Soroker - Agmon as
21 Special Counsel to the Trustee for Allowance of Interim
22 Compensation for Services Rendered and Reimbursement of
23 Actual and Necessary Expenses Incurred from February 1, 2012
24 through June 30, 2012 for Soroker - Agmon, Special Counsel,
25 period: 2/1/2012 to 6/30/2012, fee: \$363,326.31, expenses:

1 \$3,445.07.

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3 Hearing re: (5102) Application of Graf & Pitkowitz
4 Rechtsanwalte GmbH as Special Counsel to the Trustee for
5 Allowance of Interim Compensation for Services Rendered and
6 Reimbursement of Actual and Necessary Expenses Incurred from
7 February 1, 2012 through June 30, 2012 for Graf & Pitkowitz
8 Rechtsanwalte GmbH, Special Counsel, period: 2/1/2012 to
9 6/30/2012, fee: \$656,636.18, expenses: \$30,701.66.

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11 Hearing re: (5103) Application of SCA Creque as Special
12 Counsel to the Trustee for Allowance of Interim Compensation
13 for Services Rendered and Reimbursement of Actual and
14 Necessary Expenses Incurred from February 1, 2012 through
15 June 30, 2012 for SCA Creque, Special Counsel, period:
16 2/1/2012 to 6/30/2012, fee: \$114,284.97, expenses:
17 \$1,993.00.

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19 Hearing re: (5104) Application of Young Conaway Stargatt &
20 Taylor LLP as Special Counsel to the Trustee for Allowance
21 of Interim Compensation for Services Rendered and
22 Reimbursement of Actual and Necessary Expenses Incurred from
23 February 1, 2012 through June 30, 2012 for Young Conaway
24 Stargatt & Taylor, LLP, Special Counsel, period: 2/1/2012 to
25 6/30/2012, fee: \$119,857.50, expenses: \$11,497.85.

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Hearing re: (5105) Application of Williams, Barristers &
Attorneys as Special Counsel to the Trustee for Allowance of
Interim Compensation for Services Rendered and Reimbursement
of Actual and Necessary Expenses Incurred from February 1,
2012 through June 30, 2012 for Williams, Barristers &
Attorneys, Special Counsel, period: 2/1/2012 to 6/30/2012,
fee: \$328,668.12, expenses: \$0.

Hearing re: (5106) Application of Taylor Wessing as Special
Counsel to the Trustee for Allowance of Interim Compensation
for Services Rendered and Reimbursement of Actual and
Necessary Expenses Incurred from February 1, 2012 through
June 30, 2012 for Taylor Wessing, Special Counsel, period:
2/1/2012 to 6/30/2012, fee: \$2,625,051.76, expenses:
\$1,211,136.84.

Hearing re: (5107) Application of UGGC & Associes as
Special Counsel to the Trustee for Allowance of Interim
Compensation for Services Rendered and Reimbursement of
Actual and Necessary Expenses Incurred from February 1, 2012
through June 30, 2012 for UGGC & Associes, Special Counsel,
period: 2/1/2012 to 6/30/2012, fee: \$84,834.98, expenses:
\$0.

1 Hearing re: (5108) Application of Werder Vigano as Special
2 Counsel to the Trustee for Allowance of Interim Compensation
3 for Services Rendered and Reimbursement of Actual and
4 Necessary Expenses Incurred from February 1, 2012 through
5 June 30, 2012 for Werder Vigano, Special Counsel, period:
6 2/1/2012 to 6/30/2012, fee: \$30,585.15, expenses: \$0.

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8 Hearing re: (5109) Application of Greenfield Stein &
9 Senior, LLP as Special Counsel to the Trustee for Allowance
10 of Interim Compensation for Services Rendered and
11 Reimbursement of Actual and Necessary Expenses Incurred from
12 February 1, 2012 through June 30, 2012 for Greenfield Stein
13 & Senior, LLP, Special Counsel, period: 2/1/2012 to
14 6/30/2012, fee: \$5,799.60, expenses: \$53.88.

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16 Hearing re: (5110) Application of Browne Jacobson, LLP as
17 Special Counsel to the Trustee for Allowance of Interim
18 Compensation for Services Rendered and Reimbursement of
19 Actual and Necessary Expenses Incurred from February 1, 2012
20 through June 30, 2012 for Browne Jacobson, Special Counsel,
21 period: 2/1/2012 to 6/30/2012, fee: \$73,480.81, expenses:
22 \$12.65.

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24 Hearing re: (5111) Application of Osborne & Osborne, P.A.
25 as Special Counsel to the Trustee for Allowance of Interim

1 Compensation for Services Rendered and Reimbursement of
2 Actual and Necessary Expenses Incurred from February 1, 2012
3 through June 30, 2012 for Osborne & Osborne, P.A., Special
4 Counsel, period: 2/1/2012 to 6/30/2012, fee: \$1,375.20,
5 expenses: \$0.

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7 Hearing re: (5113) Application of Attias & Levy as Special
8 Counsel to the Trustee for Allowance of Interim Compensation
9 for Services Rendered and Reimbursement of Actual and
10 Necessary Expenses Incurred from February 1, 2012 through
11 April 30, 2012 for Attias & Levy, Special Counsel, period:
12 2/1/2012 to 4/30/2012, fee: \$12,832.49, expenses:
13 \$1,279.73.(related document(s)5112).

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25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorney for the Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: DAVID J. SHEEHAN, ESQ.

8

9 SECURITIES INVESTOR PROTECTION CORPORATION

10 Attorney for SIPC

11 805 15th St., N.W.

12 Suite 800

13 Washington, D.C. 20005-2215

14

15 BY: KEVIN H. BELL, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please.

3 MR. SHEEHAN: David Sheehan, Baker Hostetler, on
4 behalf of the trustee.

5 There are a number of matters on this morning I
6 know on your calendar with regard to the Madoff matter. The
7 only uncontested one is the fee applications that we are
8 making on an interim basis on behalf of the trustee as
9 counsel -- special counsel that we've retained in foreign
10 jurisdictions as well as conflict counsel, one of who is
11 here with us today.

12 In light of the heavy calendar, in the past what
13 I've done, Your Honor, is I've gutted you a fairly deep
14 summary with regard to each of the activities of the various
15 foreign counsel as well as that which is engaged in by the
16 trustee. However, in light of your calendar I can make that
17 much more brief here this morning in light of the fact that
18 there are no objections and the statutory mandate is with
19 the approval of SIPC the Court must, as Your Honor knows,
20 enter the order that is submitted and approved by SIPC.

21 So I mean to foreshorten this morning, it's a very
22 important moment and certainly this case for us, but at the
23 same time I realize Your Honor has a lot of other things
24 before you to which there are objections and to which
25 perhaps you'd rather devote your time.

1 THE COURT: I will leave it to you. This is your
2 opportunity to explain what you're doing. A lot of the
3 players who are on the other side of many of the equations,
4 the litigating equations --

5 MR. SHEEHAN: Okay.

6 THE COURT: -- are here this morning. They may or
7 may not appreciate what you have to say, but you can --

8 (Laughter)

9 MR. SHEEHAN: Well, I respect their right to
10 disagree. Well then very -- thank you very much, Your
11 Honor.

12 What I will do is, as I've done in the past, I
13 will start with what is happening in each of the foreign
14 jurisdictions and I'll highlight the activities of each of
15 the foreign counsel that we have retained and what they've
16 been doing in the reporting period for which we are seeking
17 compensation here this morning.

18 THE COURT: This is information that's of interest
19 of many of your adversaries in the later proceedings this
20 morning.

21 MR. SHEEHAN: They'll probably use it against me.

22 (Laughter)

23 THE COURT: Probably.

24 MR. SHEEHAN: I know these guys. But any way.

25 But seriously, Your Honor, the first one is Eugene

1 F. Collins. Collins is our counsel and has been our counsel
2 since the very beginning. As Your Honor knows there is the
3 Thema fund that's located there, there's multiple
4 litigations involving the Thema fund and Citrix (ph) and a
5 number of other interested parties that we pursue there.

6 We are not active in litigation there, we monitor
7 litigation which is why Mr. Collins' hours are 4.5, so
8 there's not a lot of time spent by him, but we maintain an
9 active presence there so that we can keep on eye on what
10 activity is taking place in the Irish ports.

11 The next one is Schiltz & Schiltz. Schiltz &
12 Schiltz is in Luxembourg, they are our counsel there that
13 have worked with us in a number of capacities.

14 First of all we do work closely with the
15 Luxembourg prosecutor there, we have a participation
16 agreement as we have in other jurisdictions with that
17 prosecutor and he assists us and we assist him with regard
18 to certain discovery issues.

19 In addition there is a third-party action against
20 the trustee, which actually has an application before Your
21 Honor seeking to enjoin that action here, but at the same
22 time it is proceeding in Luxembourg and Schiltz & Schiltz
23 respects the trustee in connection with that action.

24 Next is Higgs & Johnson. They're in the Cayman
25 Islands. The Cayman Islands, as Your Honor knows, is the

1 host government in many of the feeder funds that are before
2 Your Honor as defendants in these cases.

3 A number of things have happened in the Caymans.
4 Liquidators were appointed in a number of the funds and we
5 of course have active litigation there as a protective
6 action in addition to the actions that we filed here in the
7 Bankruptcy Court. Those actions proceed, we do participate,
8 we're there on a fairly regular basis.

9 The assistance of local counsel was essential in
10 dealing with those courts, and Higgs & Johnson has been with
11 us, as I say, from the beginning, and they have
12 approximately 210 hours for the work that they've done
13 through this reporting period.

14 Next one is Israel, and that's Soroker & Agmon.
15 That is a case that Your Honor has some familiarity with
16 because before you have been a number of motions to dismiss
17 on personal jurisdiction grounds and the companion matter
18 filled here in the Bankruptcy Court. This is the Magnify
19 case.

20 Magnify was a customer of BOMIS, but we had traces
21 of approximately \$135 million of fictitious profits that
22 left through Magnify, made its way into Israel through
23 initially a fellow named Albert Angoin (ph), and Albert
24 Angoin turned it over to Mr. Green, Mr. Green runs the Ushi
25 Horowitz (ph) Foundation. All that money we have traced

1 through all of those different organizations and
2 individuals, and at this time we have instituted an action
3 in Israel, handled by Soroker & Agmon, seeking to forestall
4 a dissolution of Ushi Horowitz so that we will preserve all
5 the books and records and continue to pursue and trace the
6 money as it proceeds through Israel and to a number of
7 various other corporations.

8 That's been very active in the last six months, it
9 will continue to be so -- or I should say the reporting
10 period and in the last six months -- and I think it will
11 continue to be so. In fact we are -- we have a hearing
12 scheduled in February with regard to the -- in which the
13 trustee will be testifying -- not trustee himself, but his
14 representative will be there -- and we will be actively
15 participating in that.

16 Next is --

17 THE COURT: And that's part and parcel of
18 litigation discovery going on in both France and England; is
19 that correct?

20 MR. SHEEHAN: That is true, Your Honor. The
21 tentacles of this are we recently did take a deposition in
22 Switzerland with regard to Dr. Bruner (ph) who is the
23 initial lawyer who put together the corporate paperwork that
24 structured both Ushi Horowitz and worked with Mr. Yarbreen
25 (ph) in connection with getting that done. So we took his

1 deposition in connection with the personal jurisdiction
2 motions that are here that have been made by several
3 individuals, including Mr. Bruner, suggesting that he was
4 not here.

5 We've also taken discovery in England in
6 connection with there's involvement we believe with Sonya
7 Cohen (ph) in connection with her activities in Israel and
8 we're connecting her assets into Magnify as well. So that's
9 all happening at the same time.

10 Then we have Graf & Pitkowitz which is our firm
11 Austria. Austria is very similar to what is occurring in
12 Luxembourg, we do participate there.

13 As Your Honor knows that's the home of Bank Medici
14 and Bank Austria, two of the principal defendants in the
15 Sonya Cohen lawsuit that has been brought here. We have
16 also brought a lawsuit against Sonya Cohen in the United
17 Kingdom, I'll get to that in a minute.

18 In Austria what we are doing is working very
19 closely with the prosecutor there who is conducting an
20 investigation of both of those banks as well as Sonya Cohen.
21 We are again a named participant, we have shared a good deal
22 of discovery with them and they have shared discovery with
23 us. It has become a very fruitful source of our work in the
24 Sonya Cohen cases that are principally going forward in the
25 United Kingdom at this time.

1 The other activity -- I should say the next firm
2 is -- is the SCA Creque firm, that is in BVI.

3 BVI as Your Honor also knows is the home of many
4 of the other feeder funds that are there. King Gate (ph)
5 principal among them. We've been very active in the King
6 Gate litigation in BVI and in Bermuda as well as here in the
7 United States. That is proceeding fairly actively.

8 There is an official receiver that was just
9 appointed and now being challenged by the liquidators in
10 Bermuda with regard to approximately \$100 million sitting in
11 the Bank of Bermuda which we are obviously participating in
12 as well as in BVI.

13 As I say, we're there often with them in
14 connection with a number of different applications that are
15 made by the liquidators there.

16 The next is Bermuda and that's the Williams firm.
17 Again, BVI is prominent among the participants there. I
18 just related to you the activities that are occurring with
19 regard to the bank account, the liquidators, and the
20 official receiver appointed there.

21 As a matter of fact the official receiver came
22 about as a result of activities engaged in by the trustee.
23 There initially -- the receiver appointed there was an
24 accounting firm that had been initially retained by Suradi &
25 Gracco (ph) who are the principal defendants in that

1 litigation. We objected to that. There was a hearing held
2 on that. The counts were dismissed and the official
3 receiver was appointed by the courts of Bermuda at the
4 trustee's request.

5 And Williams Barristers assisted us in all of
6 those activities.

7 The largest application, over 6,000 hours, is by
8 the firm of Taylor Wessing. Taylor Wessing is our counsel
9 in London.

10 In London what we have are several matters that
11 are pending. The most prominent of which right now and is
12 scheduled for trial in July -- or June I should say of next
13 law is the case against Mr. Bernard Madoff's directors of
14 his London operation, MSIL.

15 We also have sued there the other directors, which
16 would include Peter Madoff, soon to be sentenced and
17 therefore not a participant any longer in the proceeding,
18 Andrew Madoff who is to participate in defending the
19 litigation, as well as Sonya Cohen is also part of that
20 litigation for the \$65 million that she was paid for
21 allegedly providing what we believe to be phony, as it were,
22 research to them and was actually just a payoff by
23 Mr. Madoff, which we've alleged in those proceedings with
24 regard to people that she introduced to and through her
25 feeder funds that she created in Europe. So that's a very

1 active piece of litigation.

2 What's actually happening right now is as Your
3 Honor knows the courts in London operate on the basis of
4 prepared statements. We have written statements being
5 prepared by all of our witnesses. Those statements are then
6 submitted. We then had the opportunity not to take
7 discovery but at the time of the hearing to cross-examine
8 those witnesses based upon those statements, et cetera.

9 Since it is intimately related to what we're doing
10 in the Madoff family matter we've had a -- which is still
11 continuing here in the United States -- we are actively
12 working with the people in London, Taylor Wessing, to help
13 them prepare those witness statements to assist them with
14 regard to insolvency as an issue there. There are issues of
15 ratification that have been raised as a defense, so
16 insolvency would defeat that, so we're working with them on
17 those issues as well. So there's a lot of activity that's
18 going on there.

19 At the same time, as Your Honor knows, the Rubin
20 decision just recently was decided by the Court of Appeals
21 in London. While that appeal was pending we applied -- the
22 trustee I should say -- applied to become an amicus in that
23 proceeding. It was permitted. We worked with Taylor
24 Wessing, we did prepare a submission to the court in support
25 of the earlier decision. Unfortunately it didn't work out

1 quite that way. We are continuing to participate in Rubin
2 and as progeny we think it will come up in Bermuda in
3 connection with King Gate. It certainly will surface in
4 other jurisdictions. We believe it has a very narrow
5 holding. We do not think it actually eliminates Cambridge
6 Gas. I think Cambridge Gas is still good law and we're
7 going to continue to argue that.

8 Obviously we have to take that into account with
9 regard to how we proceed here in the United States with our
10 defaults, assuming we continue to do that, and how we then
11 proceed with them in the various jurisdictions and the
12 commonwealth, and that's another area where Taylor Wessing
13 has been of great assistance was to work with us.

14 And then last but not least is King Gate. King
15 Gate, as I've mentioned several times, is prominent in many
16 jurisdictions. BVI, Bermuda, and in London, as well as here
17 in the United States where we have an active litigation
18 ongoing which is being defended by Quinn Emanuel on behalf
19 of the liquidators.

20 That litigation in the UK has been somewhat
21 dormant because of the activities going on in the -- in
22 Bermuda and in BVI, but we have had several things occur
23 there. We requested the assistance in terms of witnesses
24 and other things in support of activities and the island and
25 Taylor Wessing has been of great assistance to us there.

1 Then continuing we have UGGC & Associates, that's a
2 French law firm in France. What we have ongoing is an
3 active investigation. Many of the people who invested
4 through Lasofa (ph) and the Luxembourg oriented feeder funds
5 were in fact French citizens.

6 The French have been up until recently not as
7 cooperative as we would have liked, but we've actually had
8 through the successful efforts of our local counsel, as well
9 as the trustee, have been able to again arrange for a
10 participation in the French criminal proceedings which
11 originally were closed and have been reopened and have been
12 reopened as a result of I think, indirectly at least, some
13 of the materials that we presented to them with regard to
14 the activities of the people like Sonya Cohen and others and
15 her colleagues that were intimately involved in raising the
16 funds out of France that were then went to Lasofa, Bank
17 Metici, and into the Sonya Cohen enterprise. So they've
18 been very, very helpful to us.

19 Of late we see the prospect for additional
20 documents and things coming there to us not only in that
21 case but in others.

22 Attias & Levy, today is their last day here before
23 Your Honor. Attias & Levy is a firm in Gibraltar. They've
24 been very, very helpful to us, but the principal partner
25 there left and switched law firms, and, quite frankly, given

1 the quality of his work he was a former attorney general in
2 Gibraltar, someone that we have had great success with. We
3 followed him to his new law firm.

4 So Attias & Levy today is, as I say, the last
5 time it's going to appear before Your Honor.

6 Through the reporting period they've been of great
7 assistance to us in a couple of endeavors. As Your Honor
8 knows very, very early on we discovered about \$150 million
9 had left and gone interest a number of enterprises, Zeus
10 among them, located in Gibraltar. We went after them and
11 were lucky enough to land at least on \$75 million that was
12 still there, locked that money up and we had a very
13 interesting battle going on there.

14 While that was happening Rubin came down. And one
15 of the side benefits of Rubin, even before it got decided by
16 the Court of Appeals was, is that there was a real concern
17 because we had a judgment here entered in this court, a
18 default judgment, that they were concerned with them being
19 used against them in Gibraltar. So what they did is they
20 came in here -- and Your Honor will recall this -- asked to
21 vacate that judgment so they could actually litigate the
22 case here. They have appeared here and the \$75 million has
23 actually been transferred to this court and that will be
24 decided hopefully in 2013.

25 So there was a side benefit to Rubin in its brief

1 existence where we did get a result that was beneficial to
2 the proceeding. That's why we still continue to follow
3 Rubin and why we think it's very important to this case
4 overall.

5 The thinking of, you know, internationalism I
6 think is the correct way that we should be looking at the
7 bankruptcy laws and how they should be enforced, and it's
8 certainly that the trustee is going to be supportive of.

9 So at the end of the day what we have in Gibraltar
10 is a continuing action there against other defendants who
11 have refused obviously to submit to the jurisdiction of this
12 court and we are continuing to litigate with them there.
13 And as I say, we have followed our counsel to a new firm and
14 you'll be hearing about them in future fee applications.

15 Then we have a firm in Switzerland, this is a very
16 minor retention, it's Werder Vigano. Again, this is a
17 situation where as Your Honor knows recently we had to take
18 a deposition there. There is a very, very strong balking
19 statue in Switzerland with regard to your ability to take
20 depositions, take documents, even take documents out of the
21 country. And in fact they criminalize that kind of
22 activity. Therefore we needed the guidance of someone who
23 is very familiar with the Swiss laws concerning those
24 balking statutes. This firm stepped in and assisted us in
25 that regard.

1 At the same time we have also (indiscernible -
2 00:16:32) as it were for the Swiss prosecutors who are also
3 looking into this. So far we've been rebuffed, we haven't
4 had the success there that we've had with -- in Luxembourg
5 and in France and in Austria, but we're hopeful that over
6 time the initial reluctance of the Swiss authorities to talk
7 to us will abate and they will in fact talk to us and we
8 will have some success there as well.

9 Then last, but not least, in terms of foreign
10 counsel we have Browne Jacobson. Browne Jacobson is another
11 United Kingdom law firm. As you might suspect, given the
12 size and scope of the Madoff international fraud, we have
13 found that Taylor Wessing has conflicts along with obviously
14 Baker Hostetler in the United States has had conflicts.

15 So we've retained Browne Jacobson in a couple of
16 matters where they've been of assistance to us. They also
17 assisted us quite frankly in the Rubin matter as well. And
18 they have helped us with regard to the King Gate matter as
19 well because there have actually been a few conflicts down
20 the road with regard to some of the (indiscernible -
21 00:17:32) entities that were involved in the King Gate
22 enterprise.

23 So those are all of the foreign counsel that we
24 have before Your Honor this morning.

25 In addition to the foreign counsel there are of

1 course other counsel that we've retained.

2 First and foremost is Windels Marx, and we have
3 with us today Mr. Nisselson who's here, he's in the
4 courtroom, and Howard is here today, okay, and Howard Simon
5 is here, two partners who are principally involved in
6 connection with that.

7 Your Honor is very familiar with the history with
8 regard to the appointment of the Chapter 7 trustee and where
9 we went with that in terms of retaining him and continuing
10 to work with him in a number of matters.

11 We've had conflicts throughout this case as you
12 would imagine in a case of this size. Windels Marx has done
13 a superb job of doing that. I know Your Honor has seen them
14 here before you on a number of matters that recently they
15 have settled, like Ivy and Beacon and Andover where we have
16 great success in terms of bringing significant monies to the
17 estate. That kind of activity is a hallmark of what they do
18 every day. They've been a tremendous asset to us.

19 Unfortunately, given again the size of the case
20 they too have conflicts. So we have a second conflicts
21 counsel, Young Conaway, and they have also come in. And I'm
22 not sure -- lower level, but they've been very, very helpful
23 to the trustee and to Windels Marx in terms of working on
24 these cases together.

25 Then in --

1 THE COURT: And Young Conaway has no conflicts?

2 (Laughter)

3 UNIDENTIFIED SPEAKER: Not yet.

4 MR. SHEEHAN: Well --

5 THE COURT: Not as yet, is that --

6 MR. SHEEHAN: -- none that they've brought to my
7 attention of late, but I haven't had that problem recently.

8 Then the last two firms, it's sort of an inside
9 into the case, is that we have two probate firms. Given the
10 nature of this fraud and this longevity a number of the
11 complaints and a number of the defendants have passed on.
12 We have retained counsel both in Florida and in New York
13 State. And in Florida it is Greenfield Stein & Senior --
14 oh, I'm sorry -- in Florida it's Osborne & Osborne, and in
15 New York it's Greenfield Stein & Senior.

16 Both of those firms have been retained by us to
17 assist the trustee in preserving claims that he may have
18 against these individuals who have passed on against the
19 estates.

20 They've also assisted us with regard to causes of
21 action we've instituted against individuals who have passed
22 on.

23 So those are all of the counsel that have been
24 retained by the trustee and have been of tremendous support
25 to him throughout the reporting people for which we seek

1 compensation here this morning.

2 And as I said at the outset, none of those
3 individuals have had an objection to their fees.

4 Last but not least is the trustee and his counsel,
5 Baker Hostetler. Your Honor sees us on a fairly regular
6 basis so you know what we're all about. The news media
7 carries daily reports of what we do, but let me just briefly
8 summarize for the reporting period what I believe are the
9 highlights of what transpired during the first six months of
10 last year.

11 One of them of course was the one that probably
12 got the most publicity and will continue to have the most
13 publicity throughout the case now was of course the Katz
14 Wilpalm (ph) matter which was actively litigated for the
15 first three months of last year, and also intensively
16 engaged in settlement negotiations with Governor Cuomo who
17 was appointed by Your Honor as the mediator. That case
18 occupied a great deal of our firm's time in terms of getting
19 it prepared to trial.

20 Through the offices of Governor Cuomo we were able
21 to obtain a very deep, deep financial insight into the
22 entire matter which led the trustee to the conclusion, which
23 Your Honor is aware of, that this should be a settlement
24 that we arrived at which was then presented to and at that
25 point the matter had been withdrawn before Judge Rakoff. We

1 presented that to him. And that settlement was approved.

2 I think to the benefit of the estate and there
3 already has been a significant -- millions and millions of
4 dollars have been paid into the estate as a result of that
5 settlement and we are very comfortable that going forward
6 the wisdom of that settlement will become even more apparent
7 to everyone.

8 Perhaps one of the most interesting things that
9 occurred as a result of that settlement, as Your Honor
10 knows, there is a tremendous clinch trading exercise going
11 on in connection with the Madoff claims. I think it's the
12 premier distressed debt available out there is a Madoff
13 claim as a matter of fact.

14 And what was happening is when the Katz Wilpalm
15 case was being litigated the market sort of receded somewhat
16 resulting in some other litigation, which we also
17 participated in, and that is the litigation involving King
18 Gate and the liquidators and DBSI, Deutsche Bank, in
19 connection with the financing of the sale of that claim.

20 Once we settled and the market changed all of a
21 sudden the liquidators wanted to do a little bit of
22 different talking about it because they thought the value of
23 the claim went up and maybe they didn't get such a good deal
24 either.

25 But those kinds of activities occur almost daily

1 in our case because of the nature of the claims and the
2 success that this trustee has had. Mr. Picard has put
3 \$9 billion into the hands of these customers and distributed
4 over three and a half billion of it, all of which as the
5 result of the activities that I've outlined here this
6 morning and which are continuing ongoing every day.

7 We also have had the success, as Your Honor knows,
8 of having your opinion ultimately approved not only by the
9 Second Circuit but (indiscernible - 00:22:51) with regard to
10 the net equity calculation and how we pay our customers.
11 And that resulted in -- that distribution that I eluded to a
12 moment ago, which was a little bit outside the reporting
13 period but worth noting here this morning -- and that is
14 over two and a half billion dollars was sent out as a result
15 of finally having net equity decided, and we did not have to
16 keep a reserve with regard to final statements. That also
17 occurred principally during the reporting period.

18 All throughout that reporting period there's
19 active litigation going on here in the United States, the
20 Merkin (ph) litigation as Your Honor knows where you've
21 appointed Judge Nitkowski (hp) who's doing a spectacular job
22 as the mediator in that case with regard to all the
23 discovery activity that we have there. That was a major
24 matter during that period.

25 We have other litigations that are occurring

1 throughout, as I've indicated, throughout the Caribbean and
2 Europe where we are there on a fairly regular basis. As I
3 speak there are two of our lawyers today in London helping
4 to prepare for the insolvency analysis that will be
5 presented next June in the courts in the United Kingdom.

6 So those kind of activities are daily, they occur
7 throughout the case, and actually quite frankly throughout
8 the world as we speak.

9 So that is in summary what we've been doing over
10 the last -- first six months of last year. No one has
11 objected to our application here this morning. I would
12 respectfully request that Your Honor approve the
13 applications of all the petitioners here today.

14 I think Mr. Bell wants to say someone from SIPC.

15 THE COURT: Mr. Bell?

16 MR. BELL: Your Honor, SIPC has been entrusted
17 by --

18 THE COURT: But your role and very interesting and
19 strong under the statute because it's one of the rare places
20 in the statute where the word "shall" comes up and the word
21 shall applicable to fee requests in SIPC is that if SPIC
22 recommends the payment of the fees the Court shall approve
23 them, which is one of the rare places where I don't have
24 much discretion unless you have something negative to say.

25 MR. BELL: Well, Your Honor, I would like to --

1 this is Kevin Bell on behalf of the Securities Investor
2 Protection Corporation.

3 Because of the entrustment of such responsibility
4 to this corporation by Congress in Section 78-EEE(b)(5)(C) I
5 want to make sure to the Court that SIPC's review of each of
6 these applications and each and every page of the invoices
7 and each and every entry of time has been done not only by
8 myself but by the general counsel, because we take this
9 responsibility where the Court has a shall do something very
10 -- at a very high level.

11 I would call your attention to the SIPC
12 recommendation that is at docket number 5152, particularly
13 paragraph 5, where you will see some of the results of the
14 discussion that SIPC has after its extremely thorough review
15 with trustee's counsel regarding adjustments that happen
16 after that very thorough and complete review.

17 We have dialogue with regard to each and every
18 invoice and those invoices, when you size them up, equal
19 more than eight feet tall for this application period for
20 all of these applicants, and we look at that very carefully
21 because of that responsibility.

22 So we have submitted recommendations at dockets
23 548 through 551 with recommendations in support of all these
24 applications. And we support all the interim applications
25 as amended and request the Court to approve the fees as

1 amended -- the applications as amended.

2 We also support the final application of Attias &
3 Levy and the payment of the funds held back on previous
4 applications by Attias & Levy.

5 And we are open to any questions the Court may
6 have about SIPC's oversight and review of these fee
7 applications if you have any. But we recommend that the
8 Court would approve the fees as submitted.

9 THE COURT: To some extent I'm very familiar with
10 the lot of the activities that are described, especially
11 with respect to trustee's counsel and Windels Marx and some
12 of the others. It's almost on a daily basis that matters
13 involving the worldwide efforts that come before my desk, so
14 I'm not at all surprised that the amount before me today,
15 which I think is approaching some \$70 million, has been the
16 subject to an oversight function by SIPC performing its
17 assigned role.

18 I'm satisfied that SIPC has done its due diligence
19 appropriately and I do find under the circumstances that I
20 have no trouble in implementing the shall requirement by
21 Congress in approving the request here today.

22 MR. BELL: Thank you, Your Honor.

23 THE COURT: Which I note are subject to
24 substantial holdbacks.

25 MR. SHEEHAN: Your Honor, I have orders prepared.

1 THE COURT: I'll entertain them.

2 MR. SHEEHAN: I actually have two orders, Your
3 Honor. One -- just so Your Honor -- one is the omnibus
4 order, but I have a separate order for Attias & Levy because
5 it is a final order for them.

6 THE COURT: Very well.

7 MR. SHEEHAN: All right, thank you.

8 (Pause)

9 THE COURT: I have approved the order.

10 MR. SHEEHAN: Thank you, Your Honor.

11 MR. BELL: Thank you, Your Honor.

12 UNIDENTIFIED SPEAKER: Thank you very much, Your
13 Honor.

14 (Whereupon these proceedings were concluded at 10:36
15 AM)

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

AAERT Certified Electronic Transcriber CET**D-408

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: December 21, 2012